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SUBJECT: NORTH AMERICAN PARTNERS DISCUSS HUMAN RIGHTS
COUNCIL

REF: MEXICO 2886

Classified By: MCPA CHARLES V. BARCLAY, REASONS: 1.4(B/D).

¶1. (C) Summary: This is the second of two cables summarizing trilateral talks on human rights cooperation with Canada and Mexico held in Mexico City on May 29. This cable focuses on issues relating to the UN system, with a particular focus on those before the UN Human Rights Council (HRC); reftel summarizes issues relating to the upcoming OAS General Assembly. As detailed in reftel, the U.S. delegation was headed by DRL DAS Erica Barks-Ruggles and included representatives of IO, DRL and L bureaus, as well as Embassy Mexico City.

¶2. (C) Summary continued: The talks covered a broad range of subjects, including the draft Declaration on the Rights of Indigenous Peoples (DRIP), women's rights, the Durban review process, the Community of Democracies, and issues relating to the institutional development of the HRC. Although the U.S. and Canada agreed on nearly all the issues raised, they both found numerous points of disagreement with the Mexicans, most significantly with respect to the DRIP and the institution-building of the HRC. Notwithstanding these areas of disagreement, all three delegations concurred that the candid discussions were very useful. The delegations tentatively agreed to meet again in early 2008 in Ottawa.
End Summary.

HRC Institution-Building: Consensus vs. Substance

¶3. (C) The Mexicans stressed their optimistic goal of reaching consensus on as many institutional issues as possible before their HRC presidency ends on June 18. The Mexicans specifically want to see completed a Universal Periodic Review mechanism (UPR), special procedures, and reform of 1503. They are willing to put off the code of conduct, and may let the agenda and working procedures slide, as well as the advisory committee. Both the U.S. and Canada strongly emphasized that in striving for consensus, the GOM should not sacrifice substance or institutional quality. Both stressed the need not to view the end of the Mexican HRC presidency as what the Mexicans had called &an end game,& as the HRC's institutional development would inevitably continue into subsequent presidencies. The GOC made clear it would not vote for flawed procedures and that it would be better to leave unresolved issues for the next presidency, rather than to approve flawed procedures now, with the expectation of fixing them later.

HRC Membership

¶4. (C) In discussing future HRC membership, all three countries agreed the primary consideration should be a country's human rights record, as judged according to objective criteria, and that regional & clean slates⁸ would lead to the election of unqualified members and undermine the HRC's credibility. The Mexicans lamented that most regional groups had not followed the agreed-upon instructions for selecting candidates, proposing that in the future, the HRC should hold a workshop explaining the credentials required of those seeking membership. DAS Barks-Ruggles noted that Belarus, candidacy presented an example of a country seeking membership solely to block international scrutiny of its human rights record. The Mexicans said they considered U.S. membership vital to the success of the HRC and hoped that a successful 2nd year of the HRC would convince the USG to join in the future.

Funding for HRC vs. OHCHR

¶5. (C) Among the biggest points of contention between the USG and GOC, on the one hand, and the GOM, on the other, was the relationship between the HRC and the Office of the UN High Commissioner for Human Rights (OHCHR). The GOM opened the discussion on HRC institution-building by complaining the OHCHR had refused to provide all the financial and political support requested by the HRC, which lacked adequate resources of its own. Mexico argued that in 2005 the UNGA had doubled the OHCHR budget in order to provide support to the HRC and that such support was particularly necessary to carry out the

UPR process. Mexico also believed the OHCHR needed to coordinate its work more closely with that of the HRC, focusing much of its technical assistance on countries identified by the HRC as having human rights problems.

¶6. (C) The USG and GOC both strongly rebutted Mexico's argument about OHCHR support for the HRC, noting that the OHCHR budget had been doubled before the HRC's creation. DAS Barks-Ruggles explained that OHCHR's budget had been doubled to help that institution build its global field presence, and its budget should not be seen as a & bank that can be robbed by the HRC.⁸ If the HRC needed further resources to carry out its mandate, it should approach the Fifth Committee in New York, with a specific and well justified request, as that is the appropriate venue. Both the USG and GOC argued strongly that the OHCHR has a separate mandate and that it was and should remain institutionally independent of the HRC. Supporting the HRC is only one small part of the OHCHR's mandate. Canada argued that the HRC's fundamental problem was not a lack of resources but rather a lack of political will amongst its members.

Universal Periodic Review

¶7. (C) Mexico's vision of the role of UPR differed sharply from that of Canada and the U.S. While the GOM saw UPR as being the HRC's key tool, and hoped to reach consensus about its use at the June HRC session, the U.S. and Canada reiterated that UPR was a process that will begin after the HRC's institution-building phase is completed, and that it would inevitably be a work in progress, evolving over time. In a private conversation on the sidelines of the talks, DAS Barks-Ruggles and the Canadian delegation head laid down a very hard marker to Mexican Ambassador Gomez Robledo that even once agreement on UPR is reached, independent, country-specific resolutions in both the HRC and the UNGA Third Committee must be retained as an important tool in the international community's efforts to advance human rights. Barks-Ruggles noted that while UPR had the possibility to greatly change the HRC's dynamic, it would do so only if it were truly universal, treated all states equally, had results that could be compared between countries and over time, and

included input from civil society.

Country Specific Resolutions

¶8. (C) Citing Cuba and Belarus as examples, DAS Barks-Ruggles added the USG was &absolutely opposed8 to retiring any of the country specific special procedures when target countries had been uncooperative. She warned that the two June sessions and the September session would set the tone for future HRC sessions. She added the HRC had to prove itself capable of clear follow-up on Sudan and begin addressing the situations in such recalcitrant countries as Burma, Zimbabwe, and the DPRK, in order to establish its credibility.

¶9. (C) Mexico expressed doubt as to the effectiveness of condemnatory resolutions, arguing that in closed societies such as Burma, the population never learned of such resolutions. DAS Barks-Ruggles rebutted the Mexican argument, noting that news of a recent UNSC resolution on Burma had reached detained opposition leader Aung San Suu Kyi within 48 hours of its passage, and that Belarusian opposition leaders had quickly learned of resolutions against their country. She argued that the international community had a moral obligation to stand up for universal rights and defend the victims of oppression.

¶10. (C) The Canadians argued that while country-specific resolutions must be maintained, they should be used sparingly. Nevertheless, country-specific resolutions must not be relinquished in the hope that the as-yet undetermined UPR process might one day take their place. They agreed with the U.S. that the UPR will take time to evolve and that until the HRC proves itself, both UNGA Third Committee resolutions and further HRC country specific resolutions would remain vital tools.

Country Specific Mandates

¶11. (C) The U.S. said it could not accept the elimination of country-specific mandates at the HRC and that it also could not accept &horse trading8 to eliminate some mandates while preserving others. The U.S. further noted the high likelihood of the loss of other mandates in the future after the loss of even one mandate, as opponents such as Cuba and Belarus would be emboldened to sharpen their attack on mandates. While the GOC publicly agreed, in a U.S.-Canada breakfast meeting prior to the formal talks, the Canadians opined that the Cuba mandate stood little chance of renewal. Canada is still debating on whether to call for a vote on the Belarus mandate and appears to be balancing the support it believes is coalescing for keeping the mandate with the fear of exposing other mandates to a vote as well.

Permanent Agenda Items

¶12. (C) The U.S. and Canada took similar positions on the issue of permanent agenda items, with both laying down a hard marker that they could not accept a permanent agenda item on Israel and the Occupied Palestinian Territories (OPT) or the right to development (RTD), and insisting that a broad &country issues8 type item could encompass OPT as well as other country-specific issues. The Mexicans stated that while they understood the U.S. and Canadian concerns, the inclusion of an agenda item on Israel and the OPT reflected &political realities8. The Canadians noted that if one country's pet issues were put on the agenda, such as OPT and RTD, other issues -- as examples, they cited women's rights and indigenous rights -- would need to be added to balance the agenda.

1503 Procedures

¶13. (C) The Canadians expressed serious concern that the

1503 procedure was losing relevance, citing the loss of the confidential Iran procedure. The Mexicans did not agree,

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saying they saw it, along with the UPR and countries, internal legislation, as being one of the three key tools for protecting human rights.

Election or Selection of Expert Advisors

¶14. (C) While all three countries agreed that experts, selection should be depoliticized as much as possible, DAS Barks-Ruggles pointed out that in crafting an acceptable selection process, &the devil would be in the details,8 and that considerable thought needed to go into this process. The process must ensure that those selected truly are experts, a point with which the Mexicans agreed. The U.S. and Canada both emphasized that expert advisors should be selected) not elected) in order to depoliticize the process. The Canadians proposed that states and stake-holders could present a list of qualified candidates for advisor positions, with the HRC President choosing from among this list of qualified candidates. They noted that member states should not have the ability to filter out candidates they deemed undesirable; candidates from any state should be eligible for consideration, as long as they were truly experts.

¶15. (C) The Mexicans agreed the process should be depoliticized as much as possible, and that candidates should in fact have substantive expertise. Nevertheless, the Mexicans preferred that experts be elected by a simple majority of HRC members from the slates of qualified candidates, rather than selected.

¶16. (C) The three delegations agreed that the selection of Special Rapporteurs should continue by the High Commissioner and not be subjected to elections. All agreed that a potential roster could be maintained of qualified and independent experts for her to choose from. This contrasted with opinion on independent experts for the expert advice body, where Mexico was willing to allow elections. Canada noted that elections would politicize the issues, but Mexico thought that elections for the expert,s body would not be harmful. DAS Barks-Ruggles emphasized that decisions on these issues should not be rushed and could be reached after the June HRC session.

UN Declaration on the Rights of Indigenous Peoples

¶17. (C) The U.S. and Canada, on the one hand, and Mexico, on the other, disagreed significantly with respect to the UN Declaration on the Rights of Indigenous Peoples (DRIP). As discussed in detail reftel with respect to the draft OAS DRIP, the GOM strongly supported the passage as is) with only a &covering resolution8 clarifying certain points in the UN DRIP, notwithstanding its admitted flaws. The GOM argued that given the large size and increased political engagement of its indigenous population, it was under considerable internal political pressure to support the DRIP. The Mexicans said that 68 countries had signed a letter to the UNGA President urging that the DRIP be approved as drafted by the HRC and that specific concerns over its content be addressed in the text of the UNGA resolution by which the DRIP would be approved. (Note: The delegation and subsequently the Embassy have repeatedly requested a copy of the letter from the GOM, which has not yet provided it. End note.)

¶18. (C) Both the U.S. and Canada laid down a hard marker that problematic portions of the DRIP text had to be changed before their two governments would be able to consider support. Canada stressed that simply including clarifications in the UNGA resolution approving the DRIP would be absolutely unacceptable. Canada noted that the DRIP, although not legally enforceable, had serious domestic

legal implications for it, which is why they could not overlook potential problems in its text. The Canadians asserted that while they supported the principle of a declaration on indigenous rights, the GOC would only vote in favor of the DRIP if the final text was amended and broadly accepted. The Canadians specified six issues in the current text about which they had particularly strong concerns, including the issues of land ownership, free and informed consent, intellectual property rights, self government, third party rights, and military issues.

¶19. (C) DAS Barks-Ruggles firmly stressed the DRIP should not/not permit exceptions on a regional or national basis, as some African states were advocating, as such exceptions would undermine the instrument,s impact. She noted the USG was particularly concerned about how the DRIP dealt with such issues as the right of self-determination of indigenous peoples, restitution, reparations, and the possible creation of a new set of rights not recognized under international law. The U.S. delegation noted that the text as it stood was not implementable and contradicts some existing U.S. regulations and laws. The U.S. and Canada also expressed concern about the inevitable inconsistencies between the DRIP and the OAS declaration, which were being negotiated simultaneously but separately. The Mexicans observed that the current effort - asking the UNGA to consider revising an instrument that had already been approved by the HRC) is unprecedented and expressed a strong preference for not amending a UNHRC-passed text.

Women,s Rights

¶20. (C) The Mexicans highlighted some of their recent domestic gender equality initiatives, including legislation dealing with domestic violence and gender equality. They said these laws reflected GOM efforts to bring national legislation in compliance with Mexico,s international commitments. The GOM strongly supports international mechanisms designed to strengthen women,s rights and agrees with the UNSYG,s proposal for a new UN &architecture8 to deal with gender issues. At this fall,s UNGA, they plan to submit a resolution on discrimination faced by rural women, to give the problem greater visibility.

¶21. (C) The Canadians said they, too, supported a new institutional architecture to deal with women,s rights at the UN, including the creation of an A/SYG position to direct these efforts. They were adamant that instruments supporting women,s rights should not be subject to a cultural specificity clause. The U.S. delegation expressed support for the GOM and GOC positions, adding that two additional topics that needed to be addressed internationally were the issues of honor crimes and violence against women committed by UN peacekeepers. The Mexicans referred to a

recommendation from the CEDAW committee following Mexico,s recent periodic report to the committee about the need to generate equality of opportunities for women within NAFTA. Mexico said it would welcome information from the U.S. and Canada about any programs undertaken to advance economic opportunities for women in their NAFTA implementation efforts.

Community of Democracies

¶22. (C) With respect to the Community of Democracies (CD), the GOM expressed three areas of concern. First, the Mexicans were concerned about the process for reviewing invitations, as they were concerned about &redoing this effort8 every time the CD meets. Second, they were concerned that Mali had made declarations about HRC elections in May without consulting all CD Convening Group members, a tactic they did not want to see repeated. Finally, they disagreed with the proposal to create a CD secretariat, which they thought would only bureaucratize the CD and which conflicted with the Calderon administration's emphasis on

austerity. DAS Barks-Ruggles responded that the trilateral mechanism did not offer an appropriate mechanism in which to discuss CD invitations, since Canada was not a CD Convening Group member. She said that while the USG did not want to see the CD become bureaucratic, it supported the creation of a very small secretariat, which would help those CD members like Mali which had small foreign ministries to better support CD coordination and activities.

Human Rights and Terrorism

¶23. (C) DAS Barks-Ruggles said the USG was concerned that some governments, such as Russia, were using the fight against terrorism as a pretext for restricting human rights and personal freedoms. Likewise, the HRC resolution dealing with defamation of religion had been twisted by some governments, including Egypt and Libya, into an excuse for restricting freedom of religion and expression. (Note: The Canadians pointedly added that some countries might see the USG's War on Terrorism as providing political cover enabling them to restrict or violate human rights. End Note.)

Durban Follow-up

¶24. (C) DAS Barks-Ruggles expressed USG concern over the potential politicization of the Durban review conference in Geneva. She added that the review conference should stay focused on racism and practical measures to address it, and should not branch out into further declarations or discussions of new and unrelated topics such as defamation of religion, as some countries were urging. She said while the USG would support efforts to move forward on practical steps to combat racism, it could not support the Durban review conference as it was currently formulated. She urged the GOM to serve as a bridge to such developing countries as India and South Africa, which could help steer the conference in a more productive direction. The Mexicans were non-committal about the Durban review conference, noting that fighting discrimination was a domestic priority and that international instruments often facilitated domestic action.

¶25. (U) DAS Barks-Ruggles has reviewed this cable.

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